

## WCA Rule Advisory Committee - 5/22/08 Meeting Draft Banking Section

### STANDARDS AND CRITERIA FOR STATE WETLAND BANKING

#### 8420.0700 PURPOSE AND ESTABLISHMENT.

**Subpart 1. Purpose.** The purpose of parts [8420.0700](#) to [8420.0760](#) is to provide standards for the establishment and administration of a state wetland banking system as authorized by Minnesota Statutes, section [103G.2242](#). ~~The purpose of the state wetland banking system is to provide an efficient, market-based structure that allows for replacement of unavoidable impacts with pre-established replacement wetlands.~~

**Subpart 42. Establishment.** The board shall establish a state wetland bank. The board or the board's assignee is responsible for management of the bank including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with parts [8420.0700](#) to [8420.0760](#). The board shall notify all local government units upon establishment of the bank. ~~Any separate banking system including those established by local governments must comply with parts 8420.0700 to 8420.0760 and must be approved by the board and the commissioner.~~

*The above subpart was relocated here from 8420.0730 as part of reorganization of the rule.*

#### ~~8420.0720 PRINCIPLES OF WETLAND BANKING.~~

~~Subpart 1. Goal.~~ Implementation of a wetland banking system must comply with the purposes and goals of the act by achieving a no-net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands.

~~Subp. 2. Sequencing prerequisite.~~ The state wetland banking system may only be used for replacement of drained or filled wetlands when the local government unit determines that the applicant has complied with all of the sequencing requirements of part [8420.0520](#) and that the owner of the account agrees to the withdrawal of wetland banking credits from the account.

~~Subp. 3. Geographic limitations.~~ Wetland banking is allowed for any impact subject to the requirements of part [8420.0543](#).

*The above section is proposed for deletion. Subp. 1 is unnecessary language, Subp. 2 is covered in the sequencing section, and Subp. 3 is covered in the replacement section.*

#### ~~8420.0710 ESTABLISHMENT OF A WETLAND BANK SITE.~~

~~Subpart 41. Eligible wetlands.~~ Only ~~wetland and buffer replacement~~ areas eligible for replacement credit under parts [8420.0540](#) to [8420.0549](#) are eligible for deposit in the state wetland bank. ~~After July 1, 1993, wetlands restored or created without prior local government unit approval as specified in this part XXXX are not eligible for deposit into the wetland bank.~~

~~Subp. 5. Ineligible wetlands.~~ Wetlands that are drained or filled under an exemption in part [8420.0122](#) and subsequently restored are not eligible for deposit in the wetland bank. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

*The yellow language above was moved here from 8420.0740 and the reference to July 1, 1993 was removed as its purpose was to serve as a transition, and 15 years later it is no longer necessary. The "ineligible wetlands" subpart is proposed for deletion as both items are covered in the replacement section.*

Subp. 2. **Deposit prerequisites.** To be deposited into the state wetland bank, a wetland must be certified as eligible for deposit by the local government unit in which it is located, according to part [8420.0740](#), subpart 1. If a local government unit elects to certify wetlands for deposit in the wetland bank, the local government unit is also responsible for ensuring that the monitoring provisions in part [8420.0750](#) are fulfilled by the fee owner or wetland bank applicant, if different than the fee owner. A local government unit may decline to certify all wetlands within its jurisdiction or, based on a comprehensive local water or wetland protection and management plan, a local government unit may elect to certify wetlands for deposit into the wetland bank only in selected areas, for example, high priority regions and areas. If the local government unit elects to reject or limit banking, it must do so by rule or ordinance, as applicable. The board may reject or modify an application for deposit if, during its review, any part of the bank application or plan is missing, incorrect, or inconsistent with this chapter.

~~Subp. 6. **Account balance.** Accounts must maintain a positive balance. A wetland bank account shall specify acreage by wetland type deposited by the account holder minus subsequent withdrawals.~~

~~Subp. 7. **Wetland banking credit withdrawals and transfers.** Wetland banking credits may be withdrawn to provide replacement pursuant to an approved replacement plan or equivalent. Wetland banking credits may also be transferred to another account holder for future use or resale if a conservation and access easement has been recorded as required in subpart 8. Wetland banking credits may be withdrawn from an account or transferred to another account by submittal of such requests on forms provided by the board along with any authorized fees. No sale, withdrawal, or transfer of credits is final until the board approves and debits the account of origin.~~

Subp. **83. Conservation and access easement.** No credits may be deposited in the state wetland bank until a perpetual conservation easement, in a format provided by the board, is granted to and accepted by the state. The easement must encompass the entire replacement wetland and buffer, unless the local government unit and the board approve an alternate boundary at the time of bank application approval. The easement shall provide for preservation of the banked wetland's functions by the fee owner and wetland banking plan applicant. The wetland banking plan applicant must also provide a title insurance policy that is acceptable to the state naming the state of Minnesota as the insured. If the conservation easement does not abut a public road, the fee owner and wetland banking plan applicant must also grant and record an access easement in favor of the board, the local government unit, and any other state, local, or federal regulatory authority that has authorized use of credits from the site for mitigation. This subpart does not apply to state land.

~~Subp. 8a. **Reporting of sale of credits.** The owner of an account in the state wetland bank must report the sale of credits to the board on withdrawal or transfer forms prescribed by the board and include a copy of the bill of sale. Proposed withdrawals are not complete until at least one regulatory authority has approved the use of the subject credits for a specific purpose. Failure to report credit sales may result in restrictions on withdrawals until the account is reconciled.~~

~~Subp. 9. [Repealed, 27 SR 135]~~

Subp. **104. Marking of boundaries of bank areas.** The boundary of bank areas must be clearly marked as prescribed in the conservation and access easement.

~~Subp. 11. **Administrative fees.** The board and local government units may collect administrative fees for managing wetland banking accounts.~~

~~Subp. 12. **Wetland banking appeals.** Appeals of the local government unit banking determinations are taken according to part [8420.0250](#).~~

Subp. **13. Fees established.** Fees must be assessed for managing wetland bank accounts and transactions as follows:

A. account maintenance annual fee: one percent of the value of credits not to exceed \$500;

B. account establishment, deposit, or transfer: 6.5 percent of the value of credits not to exceed \$1,000 per establishment, deposit, or transfer; and

~~G. withdrawal fee: 6.5 percent of the value of credits withdrawn.~~

~~Subp. 14. **Fees paid to board.** All fees established in subpart 13 must be paid to the Board of Water and Soil Resources and credited to the general fund to be used for the purpose of administration of the wetland bank.~~

*Subparts 6, 7, 8a, 11, 13, and 14 are proposed to be relocated to the new 8420.0730, Account Administration and Transactions section and partially consolidated. Subpart 12 is proposed for elimination as it is covered in the Appeals section and is redundant here.*

#### **8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.**

~~Subpart 1. **Establishment.** The board shall establish a state wetland bank. The board or the board's assignee is responsible for management of the bank including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with parts 8420.0700 to 8420.0760. The board shall notify all local government units upon establishment of the bank. Any separate banking system including those established by local governments must comply with parts 8420.0700 to 8420.0760 and must be approved by the board and the commissioner.~~

~~Subp. 2. **Deposit prerequisites.** To be deposited into the state wetland bank, a wetland must be certified as eligible for deposit by the local government unit in which it is located, according to part 8420.0740, subpart 1. If a local government unit elects to certify wetlands for deposit in the wetland bank, the local government unit is also responsible for ensuring that the monitoring provisions in part 8420.0750 are fulfilled. A local government unit may decline to certify all wetlands within its jurisdiction or, based on a comprehensive local water or wetland protection and management plan, a local government unit may elect to certify wetlands for deposit into the wetland bank only in selected areas, for example, high priority regions and areas. If the local government unit elects to reject or limit banking, it must do so by rule or ordinance, as applicable. The board may reject or modify an application for deposit if, during its review, any part of the bank application or plan is missing, incorrect, or inconsistent with this chapter.~~

*Subpart 1 was relocated to 8420.0700, Purpose and Establishment. Subpart 2 was relocated to the new 8420.0710 Establishment of a Wetland Bank Site section.*

#### **8420.07420 PROCEDURES.**

##### **Subpart 1. Deposits and credits.**

~~A. Wetland replacement credits approved before July 1, 1993, are eligible for deposit into the state wetland banking system if the wetland replacement credit was authorized by a public agency specifically for a wetland bank that has been approved by the commissioner. Also, wetland replacement credits that have been deposited in a local government unit bank before July 1, 1993, and after January 1, 1992, are eligible for deposit into the state wetland banking system if the deposit meets all the criteria in parts 8420.0700 to 8420.0760 based on a site inspection and review by the board and the commissioner.~~

~~B. After July 1, 1993, wetlands restored or created without prior local government unit approval as specified in this part are not eligible for deposit into the wetland bank.~~

*Item A above is proposed for deletion because its purpose was to provide a transition for old bank credits that is no longer necessary. Item B was relocated to the new 8420.0710 Subp. 1 and edited there.*

~~CA. There is no maximum or minimum wetland acreage eligible for deposit in the wetland bank. Based on the recommendation of the technical evaluation panel, the local government unit must identify the acreage that will receive credit. The acreage must be based on a land survey or comparable method of field measurement of the credit areas recommended for deposit. The person making the measurement must certify in writing as to the method and accuracy of the measurement.~~

~~DB.~~ The initial deposit of wetland banking credits must be done by the fee title owner or easement holder of the wetland bank area.

~~EC.~~ ~~Except as provided for in item A, if~~ In order to deposit wetland acres into the wetland bank, the wetland banking plan applicant must notify the local government unit in writing, before restoration or creation, that the proposed wetland is specifically designated for deposit into the wetland bank. This notification may be part of the documentation requested in item F. ~~In cases where excess wetland acreage is expected to result from a specific replacement plan according to parts 8420.0530 to 8420.0550, the owner must indicate on the replacement plan that the excess acreage is to be considered available for wetland banking or lose the opportunity to use the excess credits for future projects. If the excess credit is less than 1.0 acre, an account may be established without the need to grant a perpetual conservation easement to the state of Minnesota.~~

*The language above is proposed for deletion to reduce confusion about the process for depositing credits in the state wetland bank. If excess credits are expected from a replacement project and proposed for banking, the applicant must submit a bank plan application. A portion of the credits previously identified for project-specific replacement through an approved replacement plan may be deducted from the total prior to deposit per the new item E below.*

~~FD.~~ ~~In cases where~~ When a wetland is proposed to be restored or created ~~solely~~ for wetland banking purposes, ~~that is, the wetland is not part of a project-specific wetland replacement plan,~~ the wetland banking plan applicant must submit to the local government unit a bank plan containing the information required in part 8420.0530, items A and D. ~~The bank plan must include design plans that show structural, earthmoving, and vegetative management components. The plan must clearly show existing jurisdictional wetlands and areas proposed to receive credit, and be signed, dated, and consistent with part 8420.0550.~~ A copy of the bank plan shall be mailed to ~~members of the technical evaluation panel,~~ the administrator of the state wetland bank, ~~members of the public who have requested a copy, the commissioner of natural resources,~~ the district office of the United States Army Corps of Engineers, and ~~the watershed district or watershed management organization if there is one~~ those required to receive a copy of an application in part 8420.XXXX. As part of its initial review and comment on the bank plan, the panel may recommend specific performance standards that are linked to a credit allocation schedule. The wetland banking plan applicant must be advised of any performance standards and credit allocation schedule recommended by the panel. Based on input from the technical evaluation panel and other comments received, the local government unit must determine the likelihood that the restoration or creation will be successful and approve, modify, or reject the banking plan. ~~The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit decision must be mailed to the wetland banking plan applicant within ten working days of the decision. A summary of the government unit decision must be mailed within ten working days of the decision to those required to receive notice of the application.~~

~~G.~~ ~~In cases where a wetland is to be restored or created by an agency, department, or subdivision of the local government unit for deposit into the wetland bank, the local government unit must prepare the information required in part 8420.0530, items A and D, and notice this information according to item F.~~

*The changes above eliminate unnecessary language or items that are covered elsewhere in rule. The language highlighted in yellow is proposed to be relocated here from the existing item I below.*

E. When a banking plan applicant wishes to use a portion of the credits generated for project specific replacement, the bank application must identify the project and the amount of credits to be used according to the corresponding replacement plan. The credits must meet the requirements of part XXXX and the approved replacement plan, and be deducted prior to deposit of any credits into the state wetland bank.

~~HF.~~ The proposed wetland must be restored or created within two years of bank plan approval or the bank plan must be resubmitted for consideration. Upon approval, the wetland banking plan applicant shall

restore or create the wetland and notify the local government unit when construction has been completed. The technical evaluation panel shall inspect the site when construction is completed to ensure that construction specifications and the vegetation management plan have been followed. Failure to follow approved construction specifications and the vegetation management plan is sufficient grounds for the local government unit to deny consideration of the wetland for banking.

**I.G.** Up to 15 percent of the proposed credits are eligible for deposit in the bank immediately after completion of construction and vegetative planting if all of the following subitems apply:

- 1) For projects that contain elements that include dams, dikes, or other impoundment features, the construction plans were designed, overseen, and certified by a registered professional engineer.
- 2) The technical evaluation panel ~~certifies~~ verifies that the initial planting has been completed in accordance with the vegetation management plan.
- 3) The provisions of part 8420.0720, subpart 8, have been complied with.

The remaining proposed credits may be eligible for deposit no sooner than ~~six months~~ one full growing season after construction and vegetative planting has been completed ~~and approved for restored wetlands, and no sooner than one year after construction has been completed and approved for created wetlands~~. The wetland banking plan applicant shall contact the local government unit to request a determination of wetland bank acceptability and approved quantities of wetland banking credits for ~~initial~~ and subsequent deposits. The technical evaluation panel shall ensure that sufficient time has been allowed for the wetland to become established, especially vegetation and hydrology, before making this determination. ~~If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel must postpone its recommendation to the local government unit until the wetland has stabilized. As part of its initial review and comment on the bank plan, the panel may recommend specific performance standards that are linked to a credit allocation schedule. The wetland banking plan applicant must be advised of any performance standards and credit allocation schedule recommended by the panel.~~

Based on a site visit, the technical evaluation panel will determine assemble findings on the size and type of wetland ~~as well as topographic setting characteristics and, if applicable, the new wetland resulting replacement credits and public value credits resulting from the to be deposited wetland~~. The technical evaluation panel will provide the information to the local government unit.

**J.H.** The local government unit shall consider the recommendations of the technical evaluation panel and comments from those required to receive a copy of the banking plan prior to developing findings. The local government unit shall review and approve wetland banking credits and submit the complete wetland bank application for deposit, wetland bank project application, and plans to the board. If the wetland banking plan applicant chooses not to proceed with the deposit, the wetland banking plan applicant may return the wetland to its preconstruction condition without replacement ~~within five years~~. At any time within the ~~five-year~~ monitoring period, the wetland banking plan applicant may request the board to deposit any or all eligible and approved credits into the bank or may amend the bank plan and resubmit the plan to the local government unit for board certification. After ~~five years, any activity in deposit of any credits~~, the wetland is subject to this chapter.

**K.I.** To be deposited into the bank, the following information concerning the wetland must be submitted to the board by the wetland banking plan applicant or by the local government unit in which the wetland is located:

- 1) name, address, and telephone number of the wetland banking plan applicant;
- 2) a complete copy of the wetland banking plan application, supporting documents, and a legal boundary survey, completed by a registered land surveyor, describing of the land area that will be subject to restrictions;
- 3) a copy of the deed for the property containing the wetland and any easement if the wetland banking plan applicant is not the fee owner;
- 4) size amount of ~~the wetland acreage replacement credit~~ to be deposited, to the 0.1 acre, by wetland type ~~and topographic setting characteristics and, if applicable, the new wetland credits and public value credits~~; and
- 5) local government unit certification that the wetland is approved for deposit into the bank.

L. The board shall acknowledge the deposit to the wetland banking plan applicant and local government unit and officially enter the information in item ~~K~~I into the wetland bank. Information on deposited wetlands shall be available from the board on request according to ~~subpart 2, item D~~ 8420.0730 Subpart 7.

M. Wetlands deposited into the wetland bank, on which withdrawals have occurred, are subject to replacement for any subsequent ~~drainage or filling impacts~~.

N. Wetlands deposited into the wetland bank are subject to the monitoring provisions in part 8420.0750.

*The edits above mainly clarify or remove unnecessary language. There is currently only one subpart under this section – the format will be fixed when the rule sections are consolidated. The Technical Committee has also recommended some minor language changes to item F that will be worked on by BWSR staff.*

### **8420.0730 ACCOUNT ADMINISTRATION AND TRANSACTIONS.**

~~Subpart. 71. Wetland banking credit-withdrawals and transfers-transactions.~~ Wetland banking credits may be withdrawn to provide replacement pursuant to an approved replacement plan or equivalent. Wetland banking credits may also be transferred to another account holder for future use or resale if a conservation and access easement has been recorded as required in subpart 8. Wetland banking credits may be withdrawn from an account or transferred to another account by submittal of such requests on forms provided by the board along with any authorized fees. No sale, withdrawal, or transfer of credits is final until the board approves and debits the account of origin and, when necessary for transfers, establishes the new account.

*The above subpart was relocated here from the old .0720.*

#### **Subp. 2. Withdrawals.**

~~A. Before consideration of use of the wetland bank, replacement plan applicants must satisfy the requirements of part 8420.0520 or equivalent.~~

~~BA.~~ Credits from the state wetland bank may be used to mitigate wetland losses authorized by local government units or other local, state, and federal regulatory authorities provided the impacted wetland is within the state of Minnesota and the credit withdrawal procedures of this chapter are followed.

~~C. When using the wetland bank to replace drained or filled wetlands, the replacement must comply with parts 8420.0540 to 8420.0549.~~

~~D. The board, on request, will provide the following information to persons making inquiries concerning available wetland bank deposits with a local government unit jurisdiction, county, or watershed:~~

~~(1) account holder: name, address, and telephone number;~~

~~(2) available wetlands: wetland acres by type and topographic setting characteristics, and, if applicable, the new wetland credits and public value credits;~~

~~(3) location: section, township, range, county, and watershed.~~

*The deleted language above is covered in other sections and unnecessary. The grayed language above was relocated to Subpart 7 below.*

~~EB.~~ The replacement plan applicant may contact, negotiate, and purchase the required wetland banking credits from the account holder. When the account holder and applicant come to agreement, the applicant will provide requested information on a wetland banking credit withdrawal form developed by the board, and include the wetland banking credit withdrawal form as part of the wetland replacement plan transmitted to the local government unit. The wetland banking credit withdrawal form will include

information indicating the wetland type by acres for withdrawal, location of banked wetland, and ~~the topographic setting characteristics and, if applicable, the new~~ wetland credits ~~and public value credits~~ of the banked wetland.

**FC.** The local government unit must circulate the applicant's wetland replacement plan and the wetland banking credit withdrawal form to identify specific wetland banking credits as the applicable replacement wetland, using the public comment and review process in part [8420.0230](#) and to the local government unit whose jurisdiction covers the location of the wetland banking credits. The local government unit must contact the board to verify that replacement credits indicated on the wetland banking credit withdrawal form are available before final approval of wetland bank withdrawals.

**GD.** On approval of the applicant's wetland replacement plan using wetland banking credits as wetland replacement, the local government unit shall notify the board to debit the appropriate account by type and amount. The board will complete the accounting transactions and send a notice of wetland banking credit withdrawal to the account holder and the applicant. No sale, withdrawal, transfer, or use of wetland credits is valid until the board debits a wetland bank account. Wetland credits may be only used once.

~~H. The applicant shall not be allowed to begin proposed drain or fill activities until the local government unit formally approves the wetland replacement plan using the acknowledged wetland banking credits as replacement and the applicant has received notice of withdrawal of the wetland banking credits from the board or local government unit.~~

*The above language will be relocated and covered in the replacement section.*

**Subp. 3. Transfers.** An individual, corporation, local government unit, state or federal agency, or other organization may buy and hold wetland banking credits from account holders in the bank for later use or resale. Transfer of wetland banking credits must be accomplished through use of a board wetland banking credit transfer form, and must be maintained in an account in the state wetland banking system. An account will be established for the individual or organization on presentation to the board of a wetland banking credit transfer form, and evidence that the perpetual conservation easement required by part [8420.0720](#), subpart 8, has been recorded. The board will notify both account holders on transfer of the wetland banking credits.

**Subp. 8a4. Reporting of sale of credits transactions.** The owner of an account in the state wetland bank must report the sale, use, or transfer of credits to the board on withdrawal or transfer forms prescribed by the board and include a copy of the bill of sale. Proposed withdrawals are not complete until at least one regulatory authority has approved the use of the subject credits for a specific purpose. Failure to report credit sales may result in restrictions on withdrawals until the account is reconciled.

*The above subpart was relocated here from the old .0720.*

**Subp. 65. Account balance.** Accounts must maintain a positive balance. A wetland bank account shall specify acreage by wetland type deposited by the account holder minus subsequent withdrawals.

**Subp. 116. Administrative fees.** The board and local government units may collect administrative fees for managing wetland banking accounts. ~~Subp. 13. Fees established. The following Fees must be assessed for managing wetland bank accounts and transactions, as follows Subp. 14. Fees paid to board. All fees established in subpart 13 must be~~ paid to the Board of Water and Soil Resources, and credited to the general fund to be used for the purpose of administration ~~and monitoring~~ of the wetland bank:

- A. account maintenance annual fee: one percent of the value of credits not to exceed \$500;
- B. account establishment, deposit, or transfer: 6.5 percent of the value of credits not to exceed \$1,000 per establishment, deposit, or transfer; and
- C. withdrawal fee: 6.5 percent of the value of credits withdrawn.

**D Subp. 7. Account information and available credits.** The board, on request, will provide the following information to persons making inquiries concerning available wetland bank deposits with a local government unit jurisdiction, county, or watershed:

- (1) account holder: name, address, and telephone number;
- (2) available wetlands: wetland acres by type and topographic setting characteristics, and, if applicable, the new wetland credits and public value credits;
- (3) location: section, township, range, county, and watershed.

*The new Subparts 6 and 7 above were relocated here from the old .0720. Subpart 7 was relocated here from the old .0740.*

## **8420.0750 AUDITING AND MONITORING.**

### **Subpart 1. Annual report and audit.**

A. The board will develop wetland bank deposit, withdrawal, and credit transfer and withdrawal forms and distribute them to local government units indicating a desire to certify restored wetland banking credits for deposit in the wetland bank.

B. The wetland bank data file maintained by the board will contain at least the following information:

- 1) wetland acres by type, ~~topographic setting characteristics~~, restoration or creation date, and bank acceptance date, fee owner, location ~~by~~ (public land survey coordinates, local government unit, county, and watershed of the banked wetland); ~~and~~
- 2) previous withdrawals against each banked wetland by impact wetland (wetland acres by type, topographic setting characteristics, and, if applicable, the new wetland credits and public value credits, date of wetland impact), ownership (fee owner, address, telephone number) and location (public land survey coordinates, local government unit, county, and watershed of the impacted wetland); ~~and~~
- 3) the original copy of the recorded conservation and access easement for the site and a title insurance policy naming the State as the insured party.

C. The board may periodically inspect wetland bank records and correspondence maintained by a local government unit to determine compliance with this part.

D. A wetland bank status report shall be prepared as part of the report required by Minnesota Statutes, section [103G.2373](#), and ~~distributed~~ made available by the board to applicable local government units, soil and water conservation districts, watershed districts, watershed management organizations, the departments of natural resources and agriculture, and on request.

### **Subp. 2. Monitoring.**

A. After the wetland is entered into the bank, the local government unit responsible for monitoring under part [8420.0230](#) and the wetland banking plan applicant shall continue monitoring according to parts [8420.0600](#) to [8420.0630](#). A copy of each monitoring report must be submitted to the local government unit and the board. Failure to submit the required monitoring reports to the local government unit and the board by the due date specified in the approved bank plan may result in the freezing of the bank account by the board until the required reports are submitted.

B. The board shall inspect wetlands deposited into the wetland bank at least once each five years to ensure that the wetlands conform to conditions specified in the approved bank plan, and to make a determination of needed corrective action.

#### **8420.0760 ENFORCEMENT AND CORRECTIVE ACTIONS.**

A. The fee owner and the wetland banking applicant, if different from the fee owner, are jointly and severally responsible for the success of the wetland banking project and maintaining the wetland banking project in accordance with the approved wetland banking plan both during and after monitoring. The wetland banking plan applicant, if different from the fee owner, is not responsible after monitoring if the wetland banking plan applicant no longer owns an easement interest in the real estate or credits associated with the banked wetland.

B. If, on inspection, the board determines that wetlands deposited in the wetland bank are not in compliance with this chapter, the board must prescribe corrective measures to the local government unit and fee owner or wetland banking plan applicant to bring the wetland into compliance.

C. If satisfactory remediation does not result, the board may refuse future wetland bank certifications by the local government unit and future deposits from the fee owner or wetland banking plan applicant.

D. If, whether during or after the completion of the monitoring, a local government unit or the technical evaluation panel determines that a banked wetland does not substantially meet the specifications in the approved bank plan, the local government unit or technical evaluation panel must notify the board. The board shall restrict further withdrawals and transfers of all credits associated with the wetland, whether held by the wetland banking plan applicant or a subsequent account holder, until the local government unit or technical evaluation panel notifies the board, or the board otherwise determines, that the wetland banking project has been brought into compliance.

E. The local government unit or the board may undertake reconstruction work and require reimbursement of reasonable costs from the fee owner or wetland banking plan applicant.

F. Fee owners, wetland banking plan applicants, or account holders may appeal restrictions on credit withdrawals and transfers or demands for reimbursement of reconstruction costs to the dispute resolution committee of the board which shall make a recommendation to the full board.

G. Noncompliance with or impacts to, wetland banking projects are subject to enforcement under part [8420.0290](#).